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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION  
12

13 UNITED STATES OF AMERICA,	)	No. CR 03-0213-WHA
14 Plaintiff,	)	
15 v.	)	AMENDED PLEA AGREEMENT
16 DAVID SCOTT KLARMAN,	)	
17 Defendant.	)	<b>[UNDER SEAL]</b>

18  
19 I, David Scott Klarman, and the United States Attorney's Office for the Northern District  
20 of California (hereafter "the government") enter into this written plea agreement (the  
21 "Agreement") pursuant to Rules 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal  
22 Procedure:

23 The Defendant's Promises

24 1. I agree to plead guilty to counts one and two of the captioned superseding  
25 information charging me with mail fraud, in violation of 18 U.S.C. § 1341, and money  
26 laundering, in violation of 18 U.S.C. § 1956(a)(1)(B). I agree that the elements of the offenses  
27 and the maximum penalties are as follows:  
28



1 the proceeds of mail fraud.

2  
3 Maximum penalties:

- 4 (a) Maximum prison sentence 20 years  
5 (b) Maximum fine \$500,000, twice the value of the  
6 property involved in the transaction,  
7 or twice the gross gain or loss,  
8 whichever is greater  
9 (c) Maximum supervised release term 3 years  
10 (d) Mandatory special assessment \$100  
11 (e) Forfeiture To be determined by Court; All  
12 property involved in and traceable to  
13 the money laundering scheme

14 I understand that, because I am pleading guilty to more than one count, the Court could  
15 order the sentences on those counts to run consecutively or concurrently.

16 2. I agree that I am guilty of the offenses to which I will plead guilty, and I agree that  
17 the following facts are true:

18 (A) Between 1996 and 1999, I, as General Counsel of U.S. Wireless Corporation, and my  
19 colleague Oliver Hilsenrath, who was CEO, assumed control of several shell corporations in the  
20 British Virgin Islands. We intended and agreed to use these corporations to receive stock options  
21 and shares that we planned to misappropriate from our employer without proper authorization or  
22 disclosure and without adequate consideration.

23 (B) As part of this scheme and plan to defraud U.S. Wireless, I knowingly caused the  
24 company to issue by mail 130,520 shares of its stock to one of the shell corporations, IDS  
25 Telecom Investment Group, on December 31, 1999. Specifically, Hilsenrath and I signed and  
26 sent a letter to U.S. Wireless's transfer agent, Continental Stock Transfer & Trust Company, in  
27 which we falsely stated that IDS Telecom had purchased these shares upon the exercise of  
28 options and requested that Continental Stock issue, countersign, and register a certificate for  
130,520 shares of original issue U.S. Wireless common stock. In reliance on the false  
representation, Continental Stock mailed by Federal Express a stock certificate for 130,520

1 shares from its offices in New York, New York, to IDS Telecom at my attention at U.S. Wireless  
 2 in San Ramon, California. During the same course of conduct and as part of a common scheme  
 3 and plan to defraud U.S. Wireless, in 1999, I caused U.S. Wireless to issue through similar  
 4 misrepresentations and via the mails, stock certificates to several other shell corporations under  
 5 my sole or joint control, including Biskara Limited, Craiglands Limited, MSD Investment  
 6 Advisors, Inc., and Silicon Valley Investment Partners, and to Borazon Limited, a shell  
 7 corporation that I understand was under Hilsenrath's control.

8 (C) I agree that I am responsible for all losses resulting from my scheme to defraud. I  
 9 understand that the government calculates the loss value to the company associated with the  
 10 issuance of these shares as follows:

<u>Shell Corporation</u>	<u>Number of Shares (Options)</u>	<u>Loss Value</u>
IDS Telecom Investment Group	130,520 shares	\$1,973,462.40
Biskara Limited	88,016 shares (150,000 options)	\$337,981.44
Craiglands Limited	149,425 shares (150,000 options)	\$723,217.00
MSD Investment Advisors, Inc.	134,416 shares (150,000 options)	\$2,032,369.92
Silicon Valley Investment Partners	43,300 shares	\$148,952.00
Borazon Limited	43,300 shares	\$105,652.00
<b>TOTAL</b>	<b>588,977 shares</b>	<b>\$5,321,634.76</b>

19 (D) On April 3, 2001, Hilsenrath and I caused Morgan Stanley Dean Witter to wire  
 20 \$336,533 in mail fraud proceeds, from the fraudulent issuance of 43,300 U.S. Wireless shares to  
 21 Borazon Limited, to account number 428-79380-15 at Salomon Smith Barney in the name of  
 22 Dyke Limited. I understood that Hilsenrath controlled Borazon and knew that the Borazon  
 23 shares were unlawfully obtained. Hilsenrath and I caused this financial transaction with the  
 24 intent to conceal and disguise the nature, source, ownership and control of these proceeds.  
 25 During the same course of conduct and as part of a common scheme and plan to launder money, I  
 26 conducted additional financial transactions between approximately July 2000 and January 2002,  
 27 knowing that the funds represented the proceeds of my scheme to defraud and that the  
 28 transactions were designed to conceal or disguise the nature, location, source, ownership and

1 control of those proceeds. I agree that I am therefore responsible for having unlawfully  
2 laundered approximately \$9,167,657.50.

3 3. I agree to give up all rights that I would have if I chose to proceed to trial,  
4 including the rights to a jury trial with the assistance of an attorney; to confront and cross-  
5 examine government witnesses; to remain silent or testify; to move to suppress evidence or raise  
6 any other Fourth or Fifth Amendment claims; to any further discovery from the government; and  
7 to pursue any affirmative defenses and present evidence.

8 4. I agree to give up my right to appeal my convictions, the judgment, and orders of  
9 the Court. I also agree to waive any right I may have to appeal my sentence, except that I reserve  
10 the right to appeal: (a) any sentence which includes a term of imprisonment greater than the high  
11 end of the guideline range accompanying the guideline calculation contained in Paragraph 8; and  
12 (b) whether the 1998 Sentencing Guidelines Manual or the 2001 Sentencing Guidelines Manual  
13 should be applied for purposes of determining the offense level for the underlying offense  
14 pursuant to U.S.S.G. § 2S1.1(a)(1), as set forth in Paragraph 20 below.

15 5. As to any matter in which I am cooperating with the government pursuant to this  
16 agreement, I waive any right I may have to assert the attorney-client privilege to decline to  
17 answer questions relating to communications with counsel for any other defendant including a  
18 defendant acting pro se, except as to communications where counsel for the other defendant was  
19 my attorney of record. I agree to waive my attorney client privilege regarding my  
20 communications with Sichenzia Ross Friedman Ference, LLP, pertaining to all shell corporations  
21 in which I was involved. I also waive my right to conflict-free representation by any attorney or  
22 pro se defendant where a conflict arises from that attorney's or defendant's participation in a  
23 joint defense agreement to which I also was a party.

24 6. I agree not to file any collateral attack on my convictions or sentence, including a  
25 petition under 28 U.S.C. §2255, at any time in the future after I am sentenced, except for a claim  
26 that my constitutional right to the effective assistance of counsel was violated.

27 7. I agree not to ask the Court to withdraw my guilty pleas at any time after they are  
28 entered.

1 8. I understand and agree that the government agrees to recommend the following  
2 guideline calculations:

3 Mail Fraud (1998 Guidelines)

4	Base offense level, USSG § 2B1.1(a):	4
5	Specific offense characteristic, USSG § 2B1.1(b)(1)(Q), Amount of loss more than \$5,000,000:	+16
6		
7	Specific offense characteristic, USSG § 2B1.1(b)(4)(A), More than minimal planning:	<u>+2</u>
8	Adjusted offense level:	22

9 Money Laundering (2001 Guidelines)

10	Base offense level, USSG § 2S1.1(a)(1), Offense level for underlying mail fraud:	26
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11 Mail Fraud (2001 Guidelines)

12	Base:	6
13		
14	Loss (>\$2.5million):	+18
15	Specific offense characteristics: Sophisticated means:	<u>+2</u>
16		26

17	Specific offense characteristic, USSG § 2S1.1(b)(2), Defendant convicted under 18 U.S.C. § 1956:	<u>+2</u>
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19	Adjusted offense level:	28

20	<u>Grouped Offense Level</u> , USSG § 3D1.2	<u>28</u>
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21 Adjustments

22	Adjustment for role in the offense, USSG § 3B1.1(c), Aggravating role:	+2
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23	Acceptance of responsibility: (If I meet the requirements of USSG § 3E1.1)	<u>-3</u>
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25	Total Offense Level:	27

26 Based on the information now known to it, the government will not oppose a downward  
27 adjustment of three levels for acceptance of responsibility under U.S.S.G. § 3E1.1.

28 I agree to join in recommending the above calculations, except that I reserve the right to

1 argue (1) that the amount of loss is less than \$5,321,634.76; (2) that the adjustment for  
2 aggravating role pursuant to U.S.S.G. § 3B1.1(c) does not apply; and (3) that the 1998  
3 Sentencing Guidelines Manual applies to calculate the offense level for the underlying offense  
4 pursuant to U.S.S.G. § 2S1.1(a)(1), as set forth in Paragraph 20 below.

5 9. The parties agree that the forfeiture amount will be set by the Court at the time of  
6 sentencing. I stipulate and agree to an order of the District Court, pursuant to 18 U.S.C. §  
7 982(b)(1) and 21 U.S.C. § 853(e)(4), requiring me to repatriate all property subject to forfeiture  
8 as determined by the Court, up to an amount of \$9,167,657.50, and to deposit said property in an  
9 escrow account with the Clerk of the Court pending further Order by this Court. I further  
10 stipulate and agree that any proceeds of the activities described in Paragraph 2(b) that are in my  
11 possession, custody, or control, in an amount no less than \$5,000,000, will be placed in the  
12 escrow account with the Clerk of the Court within 90 days of the filing of this Plea Agreement. I  
13 agree to withdraw any pending court actions and will file no further actions in the future,  
14 concerning these funds. I agree that the funds shall be disbursed in the following order of  
15 priority, as the amount of funds allows:

- 16 (1) Restitution in an amount determined and ordered by this Court, according  
17 to the procedures set forth in 18 U.S.C. § 3664;
- 18 (2) Pre-judgment interest based on the amount of restitution, to be set as of the  
19 filing of this Plea Agreement and to be deposited with the Court Registry  
20 for payment to the Securities and Exchange Commission; and
- 21 (3) Any remainder to be remitted to the United States Marshal for forfeiture.

22 I agree that, as a condition of my supervised release, I will make a good faith effort to pay  
23 to the United States any tax losses I owe for the years 1997, 1998, 1999, and 2000. I further  
24 agree that I will make a good faith effort to pay any fine, forfeiture or restitution I am ordered to  
25 pay. Before or after sentencing, I will, upon request of the Court, the government, or the U.S.  
26 Probation Office, provide accurate and complete financial information, submit sworn statements  
27 and give depositions under oath concerning my assets and my ability to pay, surrender assets I  
28 obtained as a result of my crimes, and release funds and property under my control in order to

1 pay any fine, forfeiture, or restitution. I agree to disclose to the United States all overseas shell  
2 corporations and bank accounts under my direct or indirect control. I agree to pay the special  
3 assessments at the time of sentencing.

4 10. I agree to cooperate with the U.S. Attorney's Office before and after I am  
5 sentenced. My cooperation will include, but will not be limited to, the following:

- 6 a. I will respond truthfully and completely to any and all questions put to me,  
7 whether in interviews, before a grand jury or at any trial or other  
8 proceeding;
- 9 b. I will provide all documents and other material asked for by the  
10 government;
- 11 c. I will testify truthfully at any grand jury, court or other proceeding as  
12 requested by the government;
- 13 d. I will surrender any and all assets acquired or obtained directly or  
14 indirectly as a result of my illegal conduct;
- 15 e. I will request continuances of my sentencing date, as necessary, until my  
16 cooperation is completed;
- 17 f. I will tell the government about any contacts I may have with any  
18 co-defendants or subjects of investigation, or their attorneys or individuals  
19 employed by their attorneys; and
- 20 g. I will not reveal my cooperation, or any information related to it, to anyone  
21 without prior consent of the government.

22 11. I agree that the government's decision whether to file a motion pursuant to  
23 U.S.S.G. §5K1.1, as described in the government promises section below, is based on its sole  
24 and exclusive decision of whether I have provided substantial assistance and that decision will be  
25 binding on me. I understand that the government's decision whether to file such a motion, or the  
26 extent of the departure recommended by any motion, will not depend on whether convictions are  
27 obtained in any case. I also understand that the Court will not be bound by any recommendation  
28 made by the government.

12. I agree not to commit or attempt to commit any crimes before sentence is imposed  
or before I surrender to serve my sentence; violate the terms of my pretrial release (if any);  
intentionally provide false information or testimony to the Court, the Probation Office, Pretrial  
Services, or the government; or fail to comply with any of the other promises I have made in this

1 Agreement. I agree that, if I fail to comply with any promises I have made in this Agreement,  
2 then the government will be released from all of its promises, but I will not be released from my  
3 guilty pleas.

4 13. If I am prosecuted after failing to comply with any promises I made in this  
5 Agreement, then (a) I agree that any statements I made to any law enforcement or other  
6 government agency or in Court, whether or not made pursuant to the cooperation provisions of  
7 this Agreement, may be used in any way; (b) I waive any and all claims under the United States  
8 Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal  
9 Rules of Evidence, or any other federal statute or rule, to suppress or restrict the use of my  
10 statements, or any leads derived from those statements; and (c) I waive any defense to any  
11 prosecution that it is barred by a statute of limitations, if the limitations period has run between  
12 the date of this Agreement and the date I am indicted.

13 14. I agree that this Agreement contains all of the promises and agreements between  
14 the government and me, and I will not claim otherwise in the future.

15 15. I agree that this Agreement binds the U.S. Attorney's Office for the Northern  
16 District of California only, and does not bind any other federal, state, or local agency.

17 The Government's Promises

18 16. The government agrees to move to dismiss any open charges pending against the  
19 defendant in the indictment at the time of sentencing.

20 17. The government agrees not to file or seek any additional charges against the  
21 defendant that could be filed as a result of the investigation that led to the pending superseding  
22 information.

23 18. The government agrees not to use any statements made by the defendant pursuant  
24 to this Agreement against him, unless the defendant fails to comply with any promises in this  
25 agreement.

26 19. If, in its sole and exclusive judgment, the government decides that the defendant  
27 has cooperated fully and truthfully, provided substantial assistance to law enforcement authorities  
28 within the meaning of U.S.S.G. §5K1.1, and otherwise complied fully with this Agreement, it

1 will file with the Court a motion under §5K1.1 and/or 18 U.S.C. §3553 that explains the nature  
2 and extent of the defendant's cooperation and recommends a downward departure.

3 Joint Agreement

4 20. Because the count of conviction relating to mail fraud concerns conduct occurring  
5 in December 1999, the defendant and the government agree that the 1998 Sentencing Guidelines  
6 Manual applies to this conduct. Because the count of conviction relating to money laundering  
7 concerns conduct occurring through approximately January 2002, the parties agree that the 2001  
8 Sentencing Guidelines Manual applies to the money laundering conduct. *See United States v.*  
9 *Ortland*, 109 F.3d 539 (9<sup>th</sup> Cir. 1997). The parties agree that the Court will determine at  
10 sentencing whether, under *Ortland*, the 1998 Sentencing Guidelines Manual or the 2001  
11 Sentencing Guidelines Manual should be applied for purposes of determining the offense level  
12 for the underlying offense pursuant to U.S.S.G. § 2S1.1(a)(1).

13 The Defendant's Affirmations

14 21. I confirm that I have had adequate time to discuss this case, the evidence, and this  
15 Agreement with my attorney, and that he has provided me with all the legal advice that I  
16 requested.

17 22. I confirm that while I considered signing this Agreement and, at the time I signed  
18 it, I was not under the influence of any alcohol, drug, or medicine.

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